THE HON'BLE SRI JUSTICE GODA RAGHURAM

Writ Petition No.27236 of 2005

Dated 25-09-2006

Between:

Palpal, S/o Sital Singh,
aged about 60 years, Occ:Business,
R/o Phool Bagh,
Bahid Sitaram Bagh Temple, Hyderabad ..
Petitioner

and

The Government of Andhra Pradesh,
rep. By its Principal Secretary,
Revenue (Endowment.II) Department,
Secretariat, Hyderabad and another ..
Respondents

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ORDER:

The writ petitioner claims to be a tenant of Sri Sitaram Maharaj Samsthan (the Samsthan), whose hereditary trustee has been impleaded as the second respondent in this Writ Petition. The petitioner claims to have taken 4000 square yards belonging to the Samsthan on 'oral lease' during 1946-1947. He also asserts that later in 1954 and 1957 lease deeds were executed. It is admitted that lease deeds were on a month to month basis. The petitioner, however, conveniently omits to plead as to the period for which those lease deeds were in force, whether they were ever extended, what is the duration of the current lease deed between the parties and as to whether the leases were entered into by any public, transparent process, by which alone properties of endowment institutions could be granted on lease, in accordance with the provisions of both the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966, (for short, '1966 Act') as well as the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, '1987 Act') and the Statutory Rules made thereunder. Be that as it may. The petitioner claims to have been supplying wood to the Samsthan on credit. He also asserts that there were disputes on the amounts in

relation to supply of wood and that there was enhancement of rent also during 1977 and 1981.

According to the petitioner, the second respondent filed an application under Section 75 of the 1966 Act seeking the petitioner's eviction on the ground of default of rent. This application of the second respondent is stated to have been O.A.No.70 of 1984. During the pendency of O.A.No.70 of 1984, the second respondent is stated to have filed I.A.No.8 of 1990 therein seeking damages. The I.A. is stated to have been allowed by the Deputy Commissioner concerned on 30-07-1991 directing the petitioner to pay Rs.30/- per square yard to the second respondent. The petitioner claims to have filed R.P.No.11 of 1991, as no reasonable time was granted for payment. According to the petitioner, the Regional Joint Commissioner, Endowments, by order, dated 31-08-1991, disposed of R.P.No.11 of 1991 directing the petitioner to pay the amount ordered by the Deputy Commissioner, Hyderabad, and subject to the final orders in O.A. (O.A.No.70 of 1984) and also directed that the amount deposited be kept in a separate account. The petitioner claims to have deposited monthly rent of Rs.1,200/- in a bank account and to be not in arrears of rent. It is further asserted that during the pendency of O.A.No.70 of 1984, the second respondent filed L.G.C.No.78 of 1990 alleging that the petitioner is a land grabber. According to the petitioner, L.G.C.No.78 of 1990 was dismissed by the order of the Land Grabbing Court on 29-04-1994.

While so, the Deputy Commissioner concerned issued an order in O.A.No.70 of 1984 on 13-04-1992 allowing the O.A., declaring the petitioner to be an encroacher and directing delivery of possession. Aggrieved thereby, the petitioner filed R.P.No.63 of 1992 before the Regional Joint Commissioner, M.Z-III, Hyderabad, against the

order, dated 13-04-1992, in O.A.No.70 of 1984. By the order, dated 07-01-1997, the Regional Joint Commissioner dismissed R.P.No.63 of 1992. There against, the petitioner filed an application before the first respondent, the State Government, and the same was rejected by an order dated 29-03-2005. The petitioner challenged this order in W.P.No.9228 of 2005. The Writ Petition was eventually dismissed on 16-12-2005. In the Writ Petition, the petitioner specifically contended that in view of rejection of L.G.C.No.78 of 1990, by the order dated 29-04-1994 of the Special Court constituted under the A.P. Land Grabbing (Prohibition) Act, 1982, the Deputy Commissioner under the Endowments Act had no jurisdiction to adjudicate upon the issue, whether the petitioner was an encroacher or to record a finding that the petitioner was an encroacher contrary to the conclusion of the Special Court. While dismissing W.P.No.9228 of 2005, by the order, dated 16-12-2005, this Court categorically recorded a finding on this contention, as under:

> "Under Section 83 of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987, the expressing encroacher shall mean any person who unauthorisedly occupy any land, or building or space without the approval of the competent authority sanctioning lease or mortgage. Since a finding of fact has been recorded that the petitioner has unauthorisedly occupied the land in question, undoubtedly he falls within the definition of encroacher under the Explanation to Section 83 (1) of the Act. In the circumstances, the proceedings initiated for eviction under the Endowments Act are maintainable and the order passed thereunder has become final. Merely because the Institution has also initiated proceedings under the A.P. Land Grabbing (Prohibition) Act, 1982, which was held against the Institution, it cannot be held that it operates as *res judicata.* As a matter of fact, the order of the Special Court under the A.P. Land Grabbing (Prohibition) Act, at Hyderabad, is superfluous and the 1st respondent has rightly ignored the same while dismissing the Revision Petition."

After the filing of W.P.No.9228 of 2005 and during its pendency, the petitioner simultaneously filed a Review Petition purportedly under

Section 94 of the 1987 Act seeking a review of the earlier order of the State Government, dated 29-03-2005, dismissing the revision petition filed by the petitioner against the order of the Deputy Commissioner in O.A.No.70 of 1984. By the impugned order, dated 01-12-2005, the application filed by the petitioner on 20-04-2005 seeking review of the earlier order of the State Government, dated 29-03-2005, was dismissed. *Inter alia* the Government in the order, dated 01-12-2005, recorded that the petitioner–review petitioner did not disclose the fact of filing of W.P.No.9228 of 2005 in his application seeking review of the earlier order of the Government, dated 29-03-2005; that this omission constitutes misrepresentation of facts and also an act of mischief. Therefore, the review petition has not been considered.

After the dismissal of this review petition, by the impugned order, dated 01-12-2005, writ petition No.9228 of 2005 filed by the petitioner was also dismissed. The earlier order of the State Government, dated 29-03-2005, confirming the order of the Deputy Commissioner, Endowments, dated 13-04-1992, disposing of O.A.No.70 of 1984 (declaring the petitioner as an encroacher), is thus confirmed by the dismissal of W.P.No.9228 of 2005. The conclusion as to the petitioner being an encroacher is thus confirmed by the statutory authorities, as also by this Court in judicial review. In the circumstances, the State Government cannot record a finding contrary to the finding recorded by this Court in W.P.No.9228 of 2005.

From the chronology of the events recorded above, the petitioner is seen to be a frenzied litigant; simultaneously he had filed a Writ Petition in this Court being W.P.No.9228 of 2005 and thereafter an application before the Government seeking review of its earlier order dated 29-03-2005. He has neither withdrawn the Writ Petition before pursuing the remedies before the Government, nor he

has pleaded in the application seeking review that he had filed Writ Petition in this Court. This conduct of the petitioner does not entitle him to any discretionary relief in a *Mandamus* under Article 226 of the Constitution. In any event, the petitioner has never had a formal duly executed lease with the Samsthan, which was current and operational as on the date an application was made by the second respondent before the Deputy Commissioner concerned seeking declaration that the petitioner is an encroacher and seeking his eviction. As on the date such an application was made before the Deputy Commissioner by the second respondent under Section 75 of the 1966 Act, the petitioner was clearly and demonstrably an encroacher.

The learned counsel for the petitioner at the hearing today states that since the petitioner's possession of the property was permissive, a direction should be issued to the second respondent to negotiate for alteration of rent. The petitioner has no right, legal or equitable, to force himself as a tenant of the Samsthan's properties. The petitioner does not have a legally enforceable right to the endowments' lands. He is an encroacher, who must earlier than later be shown the door and has rightly been shown the deporting path. There are no merits.

The Writ Petition is accordingly dismissed. There shall be no order as to costs.

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GODA RAGHURAM, J.

25th September, 2006.

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